



राजपत्र, हिमाचल प्रदेश (असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, मंगलवार, 14 अगस्त, 1984/23 श्रावण, 1906

हिमाचल प्रदेश सरकार

ELECTION DEPARTMENT

NOTIFICATION

Shimla-171002, the 27th June, 1984

No. 3-84-ELN.—The Election Commission of India's Notification No. 82/HP-LA/4/82/84, dated the 12th June, 1984 corresponding to 22 Jyaishta, 1906 (Saka), containing the Judgment dated the 5th March, 1984 of the High Court of Himachal Pradesh at Shimla in Election Petition No. 4 of 1982 is hereby published for general information.

By order,
ATTAR SINGH,
Chief Electoral Officer,
Himachal Pradesh.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan,
Ashoka Road,
New Delhi-

NOTIFICATION

12th June, 1984
Dated, 22 Jyaista, 1906 (Saka).

No. 82/HP-LA/4/82/84.—In pursuance of Section 106 of the Representation of the People Act, 1951, the Election Commission hereby publishes the Judgment dated the 5th March, 1984 of the High Court of Himachal Pradesh at Shimla in Election Petition No. 4 of 1982.

भारत निर्वाचन आयोग

अशोक मार्ग,
नई दिल्ली-110001

12 जून, 1984
तारीख—
ज्येष्ठ 22, 1906 (शक)

अधिसूचना

सं० 82/हि०वि०सं० 4/82/84.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग 1982 की निर्वाचन अर्जी सं० 4 में शिमला स्थित हिमाचल प्रदेश के उच्च न्यायालय के तारीख 5-3-84 का निर्णय एतद्वारा प्रकाशित करता है।

Copy of Judgment delivered on March 5, 1984, by the Hon'ble Mr. Justice V.P. Gupta, J. in Election Petition No. 4 of 1982, titled:

Pandit Sita Ram Sharma
s/o Shri Tulsi Ram Sharma
Resident of Village Kuthera
Post Office Lehri Sarail
Tehsil Ghumarwin
Distt. Bilaspur
Himachal Pradesh

.. Petitioner,

Versus

Shri Narain Singh Swami
M.L.A.
Village Lenjta, Post Office Lehri Sarail
Tehsil Ghumarwin
Distt. Bilaspur
Himachal Pradesh

.. Respondent.

Copy of Judgment

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Election petition No. 4 of 1982.
Date of decision: March 5, 1984.

Shri Sita Ram Sharma

.. Petitioner.

Versus

Shri Narain Singh Swami

.. Respondent.

Coram

The Hon'ble Mr. Justice: V.P. Gupta, J.

The Hon'ble Mr. Justice

The Hon'ble Mr. Justice

Whether approved for reporting? Yes.

For the Appellants/Petitioners:

Shri Chhabil Das, Advocate &
Shri K. C. Rana, Advocate.
Shri S.S. Mittal, Advocate &
Shri K.S. Patyal, Advocate.

For the Respondents:

V.P. GUPTA, J.

The election for 22-Ghumarwin Constituency to the State Legislative Assembly of Himachal Pradesh was held on May 19, 1982. The parties to this petition and six other persons were the contesting candidates in the said election. The counting of votes took place on May 21, 1982 and the respondent was declared elected having secured 11,836 votes. The petitioner secured 11,350 votes. The total votes polled were 24,422 out of which 24,159 votes were validly polled and 263 votes were invalid. The result of the election shows that it was a hotly contested election for the parties. Besides 8 persons who contested the election, two more persons, that is Sarvshri Jagdish Ram and Karam Dev Dharmani had also filed their nomination papers which were duly accepted but subsequently they withdrew from the contest. The respondent contested the election as a Bhartiya Janata Party candidate while the petitioner contested the same as Congress (I) candidate. As the respondent was declared successful, therefore, the petitioner has now filed the present election petition challenging the election of the respondent and the petitioner prays that the election of the respondent be declared as void on the ground of corrupt practices with a further prayer that the respondent be disqualified for a period of six years from contesting the election. Various corrupt practices alleged in the petition are :-

- (a) That the respondent has incurred or authorised incurring of expenditure in contravention of section 77 of the Representation of the People Act, 1951 the details of which have been given in the petition. According to the petitioner the authorised expenditure was Rs. 12,500/- while the respondent had incurred on expenditure of Rs. 19,902. 19 which exceeded the limit.
- (b) That the respondent published false statement or got them published by his agents and by others with his consent believing them to be false or at any rate not believing them to be true. It is alleged that these false statements relate to the personal character and conduct of the petitioner and were reasonably calculated to prejudice the election and have actually resulted in a large number of electorates being misled and not voted for the petitioner. The details of various false statements have been enumerated in paras 5 (a) to (d) and these are alleged to have been made during the public meetings held on 4-5-1982 and 10-5-82.

- (c) That the respondent either himself or through his agents or other persons with the consent of himself and his agents has taken assistance of a number of Government servants of the prohibited class to further the prospects of his election. The details of these corrupt practices are also mentioned in para 6 (a) to (e) of the petition.
- (d) That the respondent committed the corrupt practice of hiring or procuring whether on payment or otherwise of two trucks HPN 347 and HPS 4875 for conveyance of the Voters free of charge to and from various polling stations. The details of the polling stations have been mentioned in para 3 of the petition.

Besides these allegations of corrupt practices it is also alleged that the petitioner also promoted or attempted to promote the feeling of enmity or hatred between different classes of the citizens of India on ground of religion and community for furtherance of prospects of his election and also for prejudicially affecting the election of the petitioner by making false statements in the meeting convened on 4-5-1982. It is also alleged that the respondent is guilty of corrupt practice of publication of false statements of facts which were false and which he believed to be false or did not believe to be true in relation to the candidature of the petitioner and this was done with the consent of the respondent by his agents and the particulars of this corrupt practice are given in para 9 of the petition.

The petitioner alleges that the result of the election was materially affected so far it concerned the respondent due to the irregularities, illegalities and corrupt practices committed by the agents of the respondent and on these grounds he prays that the election of the respondent be declared as void. The petitioner supported the allegations of the petition with respect to the corrupt practices by filing an affidavit along with his petition.

The respondent contested the petition and denied the allegations. It is alleged that the expenditure did not exceed the limit of Rs. 12,500/- and that the various details of the expenditure as have been given in the election petition and not included in the return filed by the respondent are wrong. It is further alleged that the truck Nos. HPN 347 and HPS 4875 were used by the respondent for supplying the authority letters to various polling agents and that they were not used for carrying voters free of conveyance charges. The various circumstances under which these trucks were used by the respondent are enumerated in para 8 of the written statement. It is also alleged that the user of these two trucks cannot be treated as a corrupt practice. The other allegations regarding corrupt practices are denied and it is alleged that the petition should be dismissed with costs.

Upon the pleadings of the parties the following issues were framed on 24-8-1982 and the case was listed for evidence :-

1. Whether the respondent incurred or authorised the incurring of expenditure in contravention of the provisions of section 77 of the Representation of the People Act, 1951 as alleged in para 4 of the election petition?
2. Whether the respondent or any other person with his consent published the statements as mentioned in para No. 5 of the election petition.
3. If so, whether such statement was false and the respondent believed the same to be false or to be not true?
4. If issues Nos. 2 and 3 are found in favour of the petitioner, whether the publication of the statement referred to in these issues amounts to corrupt practice within the meaning of section 123 of the Representation of the People Act, 1951?
5. Whether Dr. Krishana Nand, Medical Officer, Primary Health Centre, Ghumarwin at the instance of the respondent accompanied him to villages Kasaru, Lathal, Dadhol, Padyalag, Bhated, Bharioalh, Bhapral, Pandtehra, Dadhla, Darka, Tikri, Takrehra and Dakri between 4-5-1982 and 18-5-1928 and did house to house canvassing for the respondent in the said villages ?

6. Whether the respondent hired or otherwise procured vehicles for the use of free conveyance of the electors as detailed in para 8 of the petition ?
7. Relief.

After some evidence had been recorded, an application (EMP. No. 28 of 1982) was filed by the respondent on 30-11-1982 with a prayer that the election petition should be dismissed due to the non-joinder of Sarvshri Jagdish Ram and Karam Dev Dharmani, as they were necessary parties to the petition because allegations have been made against these persons in para 5 (d) of the election petition. Upon this application the following additional issues were framed on 31-12-1982 :-

1. Whether S/Shri Jagdish Ram and Karam Dev Dharmani were candidates at the election ?
2. Whether the petitioner has made any allegation of corrupt practices against the said S/Shri Jagdish Ram and Karam Dev Dharmani ?
3. If the above two issues are found in favour of the respondent, is not the election petition liable for dismissal under section 86 (1) of the Act ?

The parties lead evidence upon all the aforesaid issues framed on 24-8-1982 and 31-12-1982. Arguments have been heard.

My findings on the various issues are as under:

ADDITIONAL ISSUE NO. 1.

This issue was not contested by the learned counsel for the petitioner. EXs. RW. 41/1, RW 41/2 & RW. 41/3 are the nomination papers of Shri Jagdish Ram. These were accepted by the Returning Officer on 26-4-1982. Similarly RW. 33/1 is the nomination paper of Shri Karam Dev Dharmani and it was accepted by the Returning Officer on 26-4-1982. Shri Jagdish Ram (RW 41) has proved the nomination papers EXs. RW. 41/1 to RW. 41/3 and has stated that he filed the nomination papers from Ghumarwin Assembly Constituency for contesting the Assembly election. He further stated that his nomination papers were accepted and that he withdrew his name later on because he was only a covering candidate. Similarly Shri Karam Dev Dharmani (RW.33) has stated that he filed the nomination paper for contesting election from Ghumarwin Assembly Constituency. He also stated that he withdrew his candidature after scrutiny because he was only a covering candidate. Thus it is proved that Sarvshri Jagdish Ram and Karam Dev Dharmani were contestants at the election and this issue is decided in favour of the respondent.

ADDITIONAL ISSUE NO. 2.

The learned counsel for the respondent contended that the petitioner had made allegations of corrupt practices against Sarvshri Jagdish Ram and Karam Dev Dharmani. He referred to para 5(d) of the Election petition in support of his contention which reads as follows :-

"5(d) That on 4th May, 1982 a meeting was called in support of the election campaign of respondent No. 1 at Ghumarwin near Police station between 7.00 to 8.00 P.M. which was presided by Shri Jit Pam, Advocate and was addressed by Shri Shanta Kumar, Ex-Chief Minister of Himachal Pradesh, respondent No. 1, Jagdish Ram, Karam Dev Dharmani etc. In the aforesaid meeting the respondent No. 1 and Shri Jit Ram alleged that the petitioner was in connivance with three persons namely Amar Singh, Inder Singh and Rattan Lal was taking bribes and that the petitioner had created goondaism in the constituency. It was further alleged that the petitioner had constructed a house by using the cement of Irrigation and Public Works Departments and also the fact that the petitioner was responsible in bringing his personal influence to get Shri Baldev Singh beaten. In the meeting respondent No. 1 further alleged that in case votes were cast in favour of the Congress (I) candidate, the same situation relating to cow slaughter

would prevail as is prevailing in the State of Punjab whereas heads of cows were being found in the temples of Hindus. The aforesaid appeal apart from being false statement, also amounts to corrupt practice of the promotion of, or attempts to promote, feeling of enmity or hatred between different classes of citizens of India on the ground of religion and community which was in furtherance of the prospects of the election of respondent No. 1 and prejudicially affecting the election of the petitioner.

"That all the above noted allegations relate to the personal character and conduct of the petitioner and were made by the respondent and other persons named above with the consent of the respondent falsely, knowing those to be false or, in any case, not believing the same to be correct and were reasonably calculated to prejudice the prospects of the petitioner's election."

It was contended that the words "other persons named above" written in this para, clearly refer to Sarvshri Jagdish Ram and Karam Dev Dharmani.

The learned counsel for the petitioner contended that there are no allegations of corrupt practices against Sarvshri Jagdish Ram and Karam Dev Dharmani and the allegations are only against the respondent (Shri N. rain Singa Swami) and Shri Jit Ram. It was contended that even if the evidence no allegations of corrupt practices are made against Sarvshri Jagdish Ram and Karam Dev Dharmani.

I have gone through the averments of para 5 (d) of the petition. The following allegations are found in this para:—

- (a) A meeting was convened on 4th May, 1982 at Ghumarwin near the Police Station between 7 to 8 P.M. in support of the election campaign of the respondent.
- (b) Shri Jit Ram, Advocate, presided over this meeting.
- (c) The meeting was addressed by Shri Shanta Kumar, ex-Chief Minister of Himachal Pradesh, the respondent, Jagdish Ram, Karam Dev Dharmani and others.
- (d) The respondent and Shri Jit Ram made serious allegations against the petitioner with respect to taking of bribes, creating goondaism. Allegations against the petitioner were also made regarding construction of a house by using cement and also for beating one Baldev Singh.
- (e) The respondent also alleged that if votes were cast in favour of the petitioner then cow slaughter would become prevalent and heads of cows would be found in the temples of Hindus.

It is alleged that all the aforesaid allegations relate to the personal character and conduct of the petitioner and were made by the *respondent and other persons named above with the consent of the respondent* (emphasis mine).

The words "other persons named above" can only relate to Sarvshri Shanta Kumar, Jagdish Ram and Karam Dev Dharmani etc. The petitioner has named the respondent and Shri Jit Ram for making the allegations against him. The petitioner has further alleged that the meeting was addressed by Sarvshri Shanta Kumar, Jit Ram and Karam Dev Dharmani etc.

From these allegations made in para 5 (d) the only irresistible conclusion is that the respondent and Shri Jit Ram made allegations of corrupt practices as found mentioned in para 5 (d), and these allegations were further repeated by other persons i. e. Sarvshri Shanta Kumar, Jagdish Ram and Karam Dev Dharmani etc. who addressed the meeting. If no allegation has been made by the petitioner with respect to Sarvshri Jagdish Ram and Karam Dev Dharmani then in the concluding para it would not have been mentioned that the allegations were made by the *respondent and other persons named above with the consent of the respondent*. The names of Shri Jit Ram and the respondent and already figured in the earlier part of the para but because the petitioner wanted to make allegations of corrupt practices

against all the persons who had addressed the meeting convened on 4-5-1982, therefore the petitioner specifically stated the words "and other persons named above". The "other persons named above", therefore, clearly include Sarvshri Jagdish Ram and Karam Dev Dharmani.

It is not necessary to scrutinise the evidence for the decision of this issue because allegations in the petition are only to be seen. In view of the above discussion I am of the view that the petitioner has made allegations of corrupt practices against Sarvshri Jagdish Ram and Karam Dev Dharmani and thus decide this issue in favour of the respondent.

ADDITIONAL ISSUE NO. 3.

Section 86 (1) of the Representation of the People Act, 1951 (hereinafter called "the Act") reads as follows:—

"86. *Trial of Election petitions.*—(1) The High Court shall dismiss on election petition which does not comply with the provisions of section 81 or section 82 or section 117.

Explanation.—An order of the High Court dismiss an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98."

Section 82 of the Act reads as follows:—

"82. *Parties to the position.*—A petitioner shall join as respondent to his petition :—

- (a) where the petitioner in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and
- (b) any other candidate against whom allegations of any corrupt practice are made in the petition."

Now the withdrawal from the contest is immaterial as far as the status of a person as a candidate is concerned. Thus the withdrawal from the contest by Sarvshri Jagdish Ram and Karam Dev Dharmani is immaterial and they remained to be candidates within the meaning of section 82 (b) as has been held in 1976 Supreme Court 744 (*Udhay Singh vs. M.R. Scindia*). In Udhay Singh's case, six candidates filed nomination papers but two of the candidates withdrew their candidature after their nomination papers were found to be in order. Thus only four candidates remained in the contest. Madho Ram Scindia was declared elected and his election was challenged by Udhay Singh. In the election petition, some allegations of corrupt practices were made against Shiv Partap Singh (a candidate who had withdrawn from the election). An objection was raised that the election petition was not maintainable due to non-joinder of a necessary party i.e. Shiv Partap Singh and, therefore, the same was liable to be dismissed under the provisions of section 82(b). It was held that such a plea of non-joinder was purely a question of law depending upon the construction of the allegations in the petition and does not require evidence for its determination. This plea could be raised at any time. It was further held that the non-impleading of Shiv Partap Singh (one of the candidates who had withdrawn from the election petition and against whom allegations of corrupt practice had been made) was fatal to the election petition and as a consequence the election petition was dismissed upon this short ground. As a result of the above discussions I hold that in view of my findings on issues No. 1 and 2, this election petition is liable to be dismissed under section 86 of the Act. This issue is decided in favour of the respondent.

As evidence of the parties was recorded on all the issues and the case was also argued on all the issues therefore I am also deciding the other issues framed in the case.

ISSUE NO. 1 (framed on 24.8.82)

Section 77 requires a candidate at an election to keep a separate and correct account of all expenditure in connection with the election, incurred or authorised by him or by his election agent between the date on which he has been nominated and the date of declaration of the result thereof, both dates inclusive.

Under section 123 (6) the expenditure for the election cannot be incurred or authorised in contravention of section 77, meaning thereby that exceeding the limit of expenditure is deemed to be a corrupt practice under section 123 of the Act.

Under rule 90 of the Conduct of Elections Rules, 1961, the maximum limit of expenditure in any way of the Assembly constituency for Himachal Pradesh is fixed at Rs. 12,500/-. This fact was admitted by the learned counsel for the parties during the course of arguments.

Thus in view of the provisions of sections 77, 123 of the Act and rule 90 of the Conduct of Elections Rules, 1961 the respondent could incur an expenditure of Rs. 12,500/- for this election.

The respondent was nominated on 4-5-1982 and the election was held on 19-5-1982. The result of the election was declared on 21-5-1982. Thus the expenses which were incurred by the respondent for the election from 4-5-1982 to 21-5-1982 are to be calculated.

The respondent has filed a return Ex-PW.2/A and according to this return, the expenses incurred by the respondent are Rs. 10,304.49. The respondent has also admitted this fact in the written statement.

The petitioner in his petition has given the details of the various expenditure incurred by the respondent in contravention of section 77 of the Act. I will be dealing with all these details mentioned in para 4 of the petition separately.

4. (iii) (a).—This expenditure pertains to the hiring of a truck No. HPS 4875 for five days, while in the return, P.W. 2/A this expenditure is shown for two days only. There is no evidence to prove that this truck was hired for five days. The learned counsel for the petitioner also frankly and rightly conceded that there is no evidence to substantiate this allegation. In these circumstances, this allegation is not proved.

4. (iii) (b).—The petitioner has alleged that Jeep CH-262 was plied by the respondent but the respondent has not shown a sum of Rs. 117.80 as petrol expenses incurred by him on 11th May, 1982 and further expenses of Rs. 76.50 incurred for the purchase of petrol and brake oil on 12th May, 1982. There is no evidence regarding the expenditure dated 12-5-1982 amounting to Rs. 76.50 and it was frankly and rightly conceded by the learned counsel for the petitioner that there was no evidence to substantiate this allegation. In these circumstances, the allegations regarding an extra expenditure of Rs. 76.50 is not proved by any evidence.

Regarding the expenditure of Rs. 117.80 for the purchase of petrol on 11-5-1982, the petitioner has produced Tilak Raj Anand (P.W 3). He states that 20 litres of petrol for vehicle No. CH-262 was sold at his petrol pump at Bilaspur vide Cash Memo No. 41301, dated 11-5-1982 for Rs. 117.80. He further states that on 12-5-1982 two hundred litres of petrol was sold for vehicle No. CH-262 and that this petrol was delivered in a drum. In cross examination he admits that no record is maintained of the persons who purchased petrol and only records of the vehicles to which petrol is supplied, is maintained. He further states that the Cash Memo for the sale of 20 litres of petrol is in the hands of his salesman.

The respondent has appeared in the witness box and he states that he has shown his election expenses correctly and faithfully in his return. He was not cross examined for the purchase of the

petrol worth Rs. 117.80 for Jeep CH 262 on 11-5-1982. The salesman who sold the petrol for Jeep CH 262 on 11.5.1982 has not been produced by the petitioner. The petitioner has not produced any other evidence to connect the purchase of this petrol by the respondent. The possibility that petrol was purchased by some one else using Jeep CH 262 without the presence or consent of the respondent is not excluded. The simple fact that the respondent was plying the Jeep CH 262 at Bilaspur or that he was using the Jeep for his election campaign is not sufficient to connect the expenditure of Rs. 117.80 with respect to purchase of petrol with the expenditure incurred by the respondent or with his consent for the purpose of the election. Hence this allegation of the petitioner is also not proved.

4. (iii) (c).—It is alleged that Jeep HPB 36 was hired by the respondent at lump-sum of Rs. 2,000/- as hire charges and further expenditure of Rs. 484.90 was incurred on petrol and mobil oil. The petitioner alleges that an expenditure of Rs. 2484-90 incurred by the respondent is not shown in the return Ex.P.W.2/A. The respondent has denied this allegation.

As far as the expenditure of Rs. 484.90 is concerned, the learned counsel for the petitioner frankly and rightly conceded that there is no evidence to prove this expenditure. Regarding hiring of the Jeep HPB 38 Rattan Chand (P.W.7) states that his wife Pushpa is the owner of this Jeep. He further states that the Jeep was required by Bhartiya Janata party at Ghumarwin and that it was hired for 16 days at a consolidated sum of Rs. 2,000/-. He also states that a sum of Rs. 1,000/- was paid to him in advance by Dr. Sham Bihari (RW-47) and the balance was to be paid in two instalments. He further states that the vehicle was hired by Bhartiya Janata Party. Shri Sham Behari (R.W. 47) also admits the hiring of this Jeep by him. He is a member of the Bhartiya Janta Party. He further states that payment was made by him out of Bhartiya Janta Party funds.

→ The respondent in his statement has stated that he has given a true and faithful account of the various expenditure incurred by him. The respondent had his own Jeep CH 262. It is, therefore, quite reasonable that the expenditure for Jeep HPB 38 were borne by the Bhartiya Janta Party and the hiring charges were paid by Shri Sham Bihari (RW.47) who was an active worker of the B.J.P. The fact that Jeep HPB 38 was used by B.J.P. for the election campaign of the respondent, cannot prove that the expenses for the user or this Jeep were borne by the respondent. Sita Ram, petitioner (P.W.1) has only stated that Jeep HPB 38 was used during the election period by the respondent. The statement of Rattan Chand (P.W.7) clearly suggests that the Jeep was hired by the B.J.P. and the expenditure was not borne by the respondent although the Jeep was used for the election campaign of the respondent who was a candidate of the E.J.P. Parkash Chand (PW. 8), Lekh Ram (PW. 10), Prem Lal (PW. 11), Beli Ram (PW.12) Dhani Ram (PW.19), Rajinder Singh (PW 24) and Dhani Ram (PW.36) only state that the Jeep HPB 38 was used during the election by the respondent. The user of the Jeep by the respondent during the election is admitted by Lalman (RW. 18) and G.R. Kondal (RW. 24).

The fact that this Jeep was used by the respondent during the election is not in dispute. It was hired by the B.J.P. for the election campaign of the respondent and the expenses for the hiring of the Jeep etc. were borne by the B.J.P. through its workers. Thus after going through the evidence I have no hesitation in holding that the expenses for the Jeep HPB 38 used during the election of the respondent were incurred by the B.J.P. and not by the respondent. In view of the Explanation (1) under section 77 of the Act, this amount cannot be added to the expenditure incurred or authorised to be incurred by the respondent. Hence this allegation is not proved.

4.(iii)(d).—This allegation relates to the hire charges of truck No. HPB-391 and the expenses of diesel etc. The learned counsel for the petitioner frankly and rightly conceded that there is no other evidence to prove this allegation except the statement of Khyali Ram PW.4. Khyali Ram (PW.4) states that the truck was hired by the B.J.P. and the hire charges were also paid by the B.J.P. Under Explanation (1) of section 77 of the Act, this expenditure cannot be included to the expenditure incurred or authorised to be incurred by the respondent. Hence this allegation is not proved.

4. (iii)(e).—This pertains to the hire charges of truck No. HPB 1085 for two days at the rate of Rs. 400/- per day. Parkash Chand (PW.8) is the owner of truck No. HPB 1085 and he states that the truck was hired by the respondent for two days, that is 18th and 19th of May 1982 at Rs. 400/- per day inclusive of diesel charges and that the money was paid by the respondent. The learned counsel for the respondent contended that the truck driver was not produced and that the witness was politically interested in the petitioner and was his worker during the election. It was also contended that the respondent hired two trucks, No. HPN 347 and HPS 4875 and that if truck No. HHB 1085 was with the respondent then there was no necessity to hire the other two trucks.

Now Parkash Chand (PW.8) is admittedly a Congress (I) worker. He has tried to support the petitioner for the various allegations made in the petition e.g. the attending of the meetings etc. From his statement it appears that he is highly interested in the petitioner. It is not understood as to why he attended the meetings of the B.J.P. when he was an active Congress worker and was supporting the petitioner at all times. Even if his statement regarding the expenditure of Rs. 800/- for the hiring of the truck by the respondent is taken to be proved, still it is not proved that this truck was used by the respondent for the election purpose during his election. The non-production of Jagdish, truck driver is also a circumstance against the petitioner. Thus I am of the view that the petitioner has not successfully proved the allegation that the expenditure of Rs. 800/- was incurred by the respondent for the hire charges of the truck for his election.

4. (iii)(f).—This allegation relates to the hiring of a truck No. 5547/4477, HPB 625 and HPB 935. Darshan Singh (P.W.5) states that truck No. 4477 was hired by the B.J.P. Similarly, Hari Krishan (P.W.6) states that all the aforementioned four trucks were hired by the B.J.P. Chhotu Ram (P.W.9) states that the hiring charges were paid by the respondent. Thus from the petitioner's evidence it is proved that the expenses for the hiring of these trucks were incurred by the B.J.P. and not by the respondent. The learned counsel for the petitioner also conceded that this allegation is not proved.

4. (iii)(g).—This allegation relates to the expenses of Rs. 520/- on account of the printing of posters etc. The posters are Ex.P. 1 to Ex.P. 6. In the election return Ex. P.W.2/A the expenses for the printed matter are shown as Rs. 630/- and Rs. 445/-. Bishan Dass (P.W.15) states that he runs a Printing Press at Chumarwin and did the printing work for the B.J.P. and the respondent. He states that four thousand posters were printed for B.J.P. and the order for the same was placed by Shri Shyam Bihari. The respondent states that he got the posters pointed. If the respondent has included in his return certain expenses incurred by the B.J.P. during his election then this cannot mean that the expenses incurred by the B.J.P. were authorised or incurred by the respondent. It cannot be said that the respondent has not shown the expenditure of posters in his return Ex. P.W. 2/A correctly. In fact the respondent has shown some of the expenditure incurred by the B.J.P. for the publication of the posters which should not have been included in the return. Hence this allegation is also not proved.

The amounts of Rs. 160.95 spent on 22-5-1982 for the purchase of petrol and Rs. 400/- spent on 22-5-1982 for hiring of truck No. HPK 5570 are to be excluded from the expenditure as shown in Ex. P.W. 2/A because these two amounts were spent after the declaration of results on 21-5-1982. Thus the total expenditure of the respondent comes to Rs. 8,903.54 only. Hence in view of the above discussions, issue No. 1 is decided against the petitioner.

ISSUES NOs. 2, 3 and 4.

These three issues can be disposed of together as they are inter-connected.

Two public meetings were admittedly held on 4-5-1982 and 16-5-1982 by the B.J.P. The

meetings were addressed by Sh. Shanta Kumar, Ex-Chief Minister, Himachal Pradesh and Shri Atal Bihari Vajpai, a prominent B.J.P. leader. It is not disputed that these two meetings were also attended by Sarvshri Jit Ram, Jagdish Ram and Karam Dev Dharmani etc. who were the workers of the B.J.P.

The evidence in an election petition has to be scrutinised with great care and caution. The guiding principles for appreciating the evidence are laid down in 1977 *Supreme Court* 208 (M. Narayan Rao vs. Venkata Reddy) and 1975 *Supreme Court* 290 (Rahim Khan vs. Khurshid Ahmed). In M. Narayana Rao (supra) it is held in para 19—

- “(1) That the charge of commission of corrupt practice has to be proved and established beyond doubt like a criminal charge or a quasi-criminal charge but not exactly in the manner of establishment of the guilt in a criminal prosecution giving the liberty to the accused to keep mum. The charge has to be proved on appraisal of the evidence adduced by both sides especially by the election petitioner.
- (2) That the election held and results declared on the choice of the voters should not be lightly interfered with or set aside by a court of law. After all, in the holding of a fresh election are involved numerous botherations, tremendous expenses, loss of public time and money and the uncertainty of the public representation from a particular Constituency.
- (3) A charge of corrupt practice is easy to level but difficult to prove. If it is sought to be proved only or mainly by oral evidence without there being contemporaneous documents to support it, Court should be very careful in scrutinising the oral evidence and should not lightly accept it unless the evidence is credible, trustworthy, natural and showing beyond doubt the commission of corrupt practice, as alleged.
- (4) It must always be borne in mind that the consequences of setting aside of an election on the ground of corrupt practice are very serious for the candidate concerned as well as others involved in it. A court, therefore, should reach its conclusion with care and caution taking into consideration the broad probabilities, the natural conduct of the persons involved and the special situation in which a corrupt practice is alleged to have been committed.”

Similarly in Rahim Khan (supra) it is held :

- “9. However, we have to remember another factor. An election once held is not to be treated in a lighthearted manner and defeated candidates or disgruntled electors should not get away with it by filing election petitions on unsubstantial grounds and irresponsible evidence, thereby introducing a serious element of uncertainty in the verdict already rendered by the electorate. An election is a politically sacred public act, not of one person or of one official, but of the collective will of the whole constituency. Courts naturally must respect this public expression secretly written and show extreme reluctance to set aside or declare void an election which has already been held unless clear and cogent testimony compelling the Court to uphold the corrupt practice alleged against the returned candidate is adduced. Indeed election petitions where corrupt practices are imputed must be regarded as proceedings of a quasi-criminal nature wherein strict proof is necessary. The burden is therefore heavy on him who assails an election which has been concluded.”

Now the present election was hotly contested election because the petitioner secured 11,350 votes while the respondent secured 11,836 votes.

The allegations of making false statements in the two public meetings have been made by the petitioner. The respondent has categorically denied these allegations. I will be dealing with the various allegations. It was contended that in the meeting dated 16-5-1982 allegations

were made against personal character of the petitioner. First allegation is that one Prem Lal alias Pinki sang three songs. Copies of these songs are Annexure 'A' to the petition. According to the learned counsel for the petitioner these songs cast aspersions on the personal conduct and character of the petitioner which were false and were not believed to be true by the respondent. It is alleged that these songs were subsequently tape-recorded by Parkash Chand (PW.8). Now Parkash Chand (PW.8) is a highly interested person. He, in fact mentioned about the songs sung by Prem Lal alias Pinky to the petitioner. Upon the asking of the petitioner he called Prem Lal alias Pinky at his shop and got the songs sung from him for tape recording which was done after about 6/7 days of the meeting. It is not understood as to why the witness took pains to get songs tape recorded on a subsequent date at the asking of the petitioner. From his cross examination it is apparent that he is a Congress (I) worker and is not related to Prem Lal alias Pinky. He tried to prove all the allegations of corrupt practices levelled by the petitioner against the respondent. He is a highly interested witness and in fact is willing to state anything in favour of the petitioner. The petitioner has not produced Prem Lal alias Pinky. I am of the view that this allegation is not proved.

It is then alleged that in the meeting of 16-5-1982 at the instance of the petitioner a beating was given to Baldev Singh, an Excise clerk and that the petitioner got his house constructed out of the cement mis-appropriated from the Irrigation and Public Works Department of Himachal Pradesh. Similarly, it is alleged that a corrupt Tehsildar was stationed in Ghumarwin on account of the influence of the petitioner and that the petitioner had three *Dalals*, namely, Amar Singh, Inder Singh and Rattan Lal.

The petitioner has produced Parkash Chand (PW.8) to substantiate these allegations. He is an active Congress (I) worker and is interested in the petitioner. Another witness (PW.11) has also tried to support the petitioner with respect to these allegations but he has admitted that he never talked to the petitioner about his attending the meetings. It is not known as to how the petitioner came to know about him because according to the statement of the witness he was disclosing this fact for the first time in Court. Rajinder Singh (PW.24) has deposed about the meeting dated 16-5-1982. This witness is not in a position to give the number of the Jonga vehicle used by the petitioner during his election days although he had been seeing the petitioner using a Jonga vehicle. It is not understood as to how this witness could remember as to what was stated by the persons who addressed the meeting. Nand Lal (PW.29) has also supported the petitioner's version but he was a counting agent of the petitioner during the election and is interested in the petitioner. Mohinder Singh (PW.33) is a resident of about 11 kilometres from Ghumarwin and he never talked about his attending the meeting to the petitioner on any earlier occasion. Sada Nand (PW.39) and Kashmir Singh (PW.43) have also deposed in petitioner's favour but both these witnesses were Counting Agents for the petitioner and are highly interested in him.

The evidence is to be scrutinised with great care and caution. It is not uncommon for the parties' supporters to depose falsely with a view to see their candidate succeeding. I am not inclined to place any reliance upon the oral statements of these witnesses regarding the various allegations made by the petitioner with respect to his personal conduct and character. It is also not proved that the allegations, if any, were made at the instance and with the consent of the respondent.

The next allegation is regarding the meeting dated 4-5-1982. This meeting was in support of the election campaign of the respondent at Ghumarwin near the Police Station between 7 to 8 P.M. It was presided over by Shri Jit Ram, Advocate, and was addressed by Sarvshri Shanta Kumar, Ex-Chief Minister, Himachal Pradesh, respondent, Jagdish Ram and Karam Dev Dharmani and others. The petitioner has alleged that in this meeting it was stated that the petitioner had created goondaism in the constituency and was taking bribes in connivance with Amar Singh, Inder Singh and Rattan Lal. Construction of a house with the cement of the

Irrigation and Public Works Department was also attributed to the petitioner and it was also alleged that if the petitioner became successful then cow slaughter would become prevalent as in the State of Punjab. It is alleged that these statements were false and amounted to corrupt practices by promotion of or attempt to promote feelings of enmity or hatred between different classes of citizens of India on the ground of religion and community and that the same had prejudicially affected the election of the petitioner.

The petitioner has produced oral evidence to substantiate these allegations. Parkash Chand (PW.8) states about these allegations. He states that the respondent was sitting on the stage during the meeting. He is an active Congress (I) worker and is interested in the petitioner. He has supported the petitioner on all aspects. While discussing the meeting of 16th May, 1982 I have already stated that the statement of this witness is unreliable. Lekh Ram (PW.10) supports the allegations of the petitioner with respect to the meeting dated 4th May, 1982. He is also member of the Congress (I) and worked for the Congress (I) candidate at Gehrwin constituency of Bilaspur district during the last election. In these circumstances, he is also an interested witness and, therefore, his statement is not reliable.

Prem Lal (PW.11) also deposes about these facts. He states that he never disclosed about his presence to any person and that he was deposing this fact for the first time in Court. It is not understood as to how the petitioner cited him as witness for proving the allegations made in the petition with respect to the meeting dated 4-5-1982. His statement can also not be believed.

Prem Lal (PW.16) has also deposed in favour of the petitioner. He is an employee of the Co-operative Federation or the last about 4 years and the petitioner is the Chairman of the Federation. This witness being an employee of the Federation, is interested in supporting the petitioner. He admits that he remained on leave from 6-5-1982 to 19-5-1982 and was at his village Dhakri which is about 1-1/2 kilometre from Ghumarwin. He has denied that he worked for the petitioner during election but the fact that he was on leave from 6th May to 19th May 1982 does raise some doubt about his having worked for the petitioner during the election because this was the crucial time for the election campaigning. As such his statement cannot be believed and the same does not appear to be disinterested.

Dhani Ram (PW.36) has also deposed regarding the meeting of 4-5-1982. He is also a prominent Congress worker and is interested in the petitioner for political reasons. His statement cannot be treated to be a statement of a disinterested person. Ram Singh (PW.38) also states about the meeting dated 4-5-1982. He was a member of Parja Mandal in 1948 which merged in the Congress party. He is an old Congress man although he has stated that after 1948 he did not take any part in the politics. Harbhaj (PW.41) also deposed about the meeting dated 4-5-1982. He is a person from a far off place. He is a resident of Nain and had gone to attend the meeting casually as the same was to be addressed by Shri Shanta Kumar. It is difficult to put reliance upon this witness and such like witness can be procured at any time.

The respondent has also produced some oral evidence. Shri Narain Singh Swami, respondent (RW.1) has denied all the allegations. Shri Jit Ram (RW.28) was admittedly present in the meeting. He has denied the various allegations which are attributed to the respondent. Paras Ram Rai (RW.30) states that he attended the meeting at Ghumarwin but no allegations of the type as have been mentioned in the petition were ever made and that the personal character and conduct of the petitioner were never challenged in the meeting. Shri Jagdish Ram Sharma (RW.41) also states that he attended the meetings convened on 4-5-82 and 16-5-82 and that in these meetings no Speaker made any allegations against the personal character or conduct of the petitioner. Sham Bihari (RW.47) also states in similar manner and has categorically stated that no allegations challenging the conduct and character of the petitioner were ever made in the meeting convened by the Bhartiya Janata Party. In view of the fact that the petitioner's witnesses are highly interested in the petitioner, I am not inclined to place any reliance upon their statements. As a result of

the above discussion I decide Issues Nos. 2 and 3 against the petitioner. As Issue Nos. 2 & 3 have been found against the petitioner, therefore no finding is required on Issue No. 4.

ISSUE NO. 5

It is alleged that Dr. Krishna Nand, Medical Officer of the Primary Health Centre, Ghumarwin accompanied the respondent for canvassing in various villages and did canvassing for the respondent. Similarly there are allegations that other Govt. servants also canvassed for the respondent.

No written complaint was ever made by the petitioner to any authority during the election days about Dr. Krishna Nand having taken any active interest in the election campaign. Dr. Krishna Nand has not been produced as a witness. The learned counsel for the petitioner relied upon the oral statements of a few witnesses. Beli Ram (P.W.12) states that the respondent came to his house with Dr. Krishna Nand and Ramesh Chand and the respondent asked this witness to vote for him. No canvassing is attributed to Krishna Nand. The simple fact that Dr. Krishna Nand was accompanying the respondent does not mean that he was canvassing for the respondent.

Khazana Ram (PW.13) states that Dr. Krishna Nand asked him to vote for B.J.P. and that the respondent visited his village 5 to 7 days before the election with Dr. Krishna Nand. He is a nominated member of the Town Area Committee and was nominated during the Congress (I) resime. He appears to be an interested person. Further, he was never asked to vote for the respondent. Ram Krishna (PW.14) states that Dr. Krishna Nand had asked him to stamp at the symbol of the B.J.P. In cross examination he admits that he never disclosed about the visit of Dr. Krishna Nand to his village for canvassing to any person before the date of the recording of his statement in Court. Nand Lal (PW.17) states that Dr. Krishna Nand asked him to vote for the respondent and to stamp the symbol of Kamal flower on the poll day. He does not remember the date when Dr. Krishna Nand approached him for the purpose. Gulam Mohd. (PW.18) and Durga Datt (PW.20) also state in a similar manner. Baldev Singh (PW.22) also states that he was asked by Dr. Krishna Nand to watch the interests of the respondent and vote for him. Shri Narain Singh Swami, respondent (RW.1) has denied all these facts.

As there is no written complaint to any authority about the canvassing by Dr. Krishna Nand and such type of oral evidence can be procured easily, therefore, I do not place any reliance upon this evidence. In view of the above discussion it cannot be believed that Dr. Krishna Nand canvassed for the respondent during the election or that any canvassing was done by him at the instance of the respondent. This issue is decided against the petitioner.

ISSUE NO. 6

This issue was hotly contested. According to the petitioner, two trucks HPN 347 and HPS 4875, were hired or otherwise procured by the respondent for the use and free conveyance of electors and the hiring or procuring of these trucks for the free conveyance of the electors is a corrupt practice. The learned counsel for the petitioner referred to section 123, sub-section (5) of the Act.

The learned counsel for the respondent on the other hand contended that the two trucks were never hired or procured for the free conveyance of the electors. It was contended that the trucks were not used for the free conveyance of the voters. Shri Ram (PW.23) states that truck HPN 347 was hired by the B.J.P. on 18-5-1982 and he was the driver of the truck. He further states that this truck was used on the election day i.e. 19-5-1982 for carrying voters. Balbir Singh (PW.26) states that a truck met him near Nehri Mor. He was accompanied by some other voters. Some persons were already sitting in the truck. He was asked to board the truck and was left at the polling booth. He further states that nobody asked for any fare for travelling in the truck. Ishwar

Dass (PW.27) also states in the same manner. Raj Kumar (PW.28) also states that he boarded the truck at the instance of Master Ram Dass and no fare was paid by him nor any fare was asked. He admits that he was a Counting Agent of the Congress (I) party at the time of counting. Fatch Singh (PW.30) also states about his boarding the truck. He admits that he is a member of the Bilaspur Co-operative Federation and President of the Co-operative Societies. He also admits that the petitioner is the President of the Federation. Chuni Lal (PW.31) states about having boarded the truck without payment of any charges. Bhagwan Dass (PW.32) also states in the like manner. Sukh Ram (PW.34) admits having boarded the truck on the day of poll. He has admitted that his son is employed in the Co-operative Bank and that the petitioner is the Chairman of the Bank. Durga Dass (PW.35) also states about his having boarded the truck. Hareshwar Dayal (PW.37) also states that he boarded a truck on the day of poll. Gurdial Singh (PW.42) has also stated about his having boarded the truck.

According to these witnesses they boarded truck HPN 347 on the day of poll and did not pay any hire charges or in other words, they were allowed free conveyance. All these persons met the truck in the way when they were already proceeding to the polling booth. There is no allegation that they were canvassed by any person to Vote in favour of the respondent.

Now if the truck is proved to have been plying on the road for any different purpose and it stops to carry or give a lift to a person who is going to the polling at the instance of that person (Elector) or at the instance of the truck driver, then this fact does not mean that the truck was hired or procured by the respondent for the free conveyance of the electors. If the explanation of the respondent is accepted regarding the hiring of the truck for the purpose of delivering the forms to the polling agents then in that case the hiring or procuring of the truck for the free conveyance of the voters is automatically belied.

From the statements of the witnesses and the admission of the respondent as well as the return statement Ex.P.W. 2/A it is proved that this truck (HPN 347) was hired or procured by the respondent on 19-5-1982.

The other truck used was HPS 4875. The hiring of this truck by the respondent is also admitted. Hence it is proved that the two trucks were hired or procured by the respondent. Now it is only to be examined as to whether the explanation offered by the respondent is a true version or not.

For appreciating the evidence, it is better to refer to the plan of the constituency Ex. RW 24/1 and the forms used for appointing the polling agents. There are also statements of certain dis-interested independent official witnesses. Shri Abbey Shukla (RW 2) was the Deputy Commissioner, Bilaspur and Shri Jiwa Nand Jiwan (RW.4) was the Sub-divisional Magistrate, Ghumarwin at the relevant time. Shri S.S. Gupta (RW.5) was the Magistrate who was conducting and supervising the election.

Shri Abhey Shukla (RW.2) states that the Asstt. Returning Officer sent him a wireless message on the day of poll (19-5-82) mentioning that there were certain complaints from the polling agents of the respondent that they were not being allowed entry for want of proper forms appointing them as polling agents.

Shri Jiwa Nand Jiwan (RW.4) states that on 19-5-1982 Shri Shanti Sarup (RW.52) Executive Magistrate, Ghumarwin who had been deputed to supervise about 20 or 25 polling stations told him that the polling agent of the respondent at the Government Higher Secondary School, Ghumarwin, was not in possession of proper and prescribed appointment form. He was further told that within half an hour of this defect being pointed out, the said polling agent had produced a prescribed form of his appointment. He also states that on 19-5-1982 he received a wireless

message from the Election Officer. Copy of the message is Ex.RW.4/A which reads as follows :-

"Wireless

Crash

Classed

TO ASSISTANT RETURNING OFFICER (SDM) GHUMARWIN.

3-ELEC-20/97

DATED 19-5-1982.

POLLING AGENT WHO ARE APPOINTED BY THE CONTESTING CANDIDATES ON HANDWRITTEN OR TYPED PROFORMS SHOULD ALSO BE ALLOWED TO ENTER IN THE POLLING STATION IN CASE PRESCRIBED FORMS NOT AVAILABLE."

Shri Shanti Sarup (RW.52) states that he had 32 polling stations under his supervision. He was appointed as a Sector Officer at Ghumarwin to supervise the election proceedings. He states that out of these 32 polling stations 13 were in Bilaspur (Sadar) and the remaining 19 were in Ghumarwin. He states that he started visiting the polling stations at 6.30 A.M. on 19-5-1982 while the polling was to start at 7.30 A.M. He also states that when he visited the polling station in Ghumarwin constituency in Nehru Yuvak Kendra, he was told by the polling officer that the polling agent form of the B.J.P. candidate was not a proper form. The polling agent was not allowed entry in the polling booth and upon his asking the polling agent came out of the polling booth. He further states that outside the polling booth, some B.J.P. persons contacted him and told him that a mistake had been committed. He told those persons that he could not allow any one to enter the polling booth without proper form. He also went to two more polling stations of Ghumarwin constituency but polling agents of B.J.P. candidate had not reached these polling booths. He further states that he instructed the presiding officers to check the authorization forms of the agents if the same were presented to them by the B.J.P. agents. He visited five polling stations within an hour and then he visited the remaining polling stations. He also states that at about 8.30 A.M. he met one professor who had come from Delhi and that the said professor tried to convince him that the authorisation forms given in favour of the polling agents were proper and that the real intention of the B.J.P. was to authorise polling agents to act on their behalf as polling agents in that specific booth. He proved one such form Ex. RW. 10/2 and states that he had rejected such a form as not being proper form. In cross examination he states that when the Professor told about the intention of the B.J.P. regarding authorisation then he felt satisfied and allowed the polling agent to enter the polling booth on the basis of the authorisation form which had earlier been found to be improper by him.

The form Ex. P.W.-10/2 is in following language :-

To

The presiding officer,
Polling Station No. 19,
Ghumarwin Constituency.

Sir,

Kindly permit my polling agent to take a true copy of the entries made in the ballot paper account and attest it as a true copy. I am attaching herewith a copy of form 16. The relevant Rule No.45 of the Conduct of Elections Rules, 1961 is reproduced below :-

45. *Account of ballot papers.*—(1) The presiding officer shall at the close of the poll prepare a ballot paper account in Form 16 and enclose it in a separate cover with the words "Ballot Paper Account" superscribed thereon.
- (2) The presiding officer shall furnish to every polling agent present at the close of the poll a true copy of the entries made in the ballot paper account after obtaining a receipt from the said polling agent therefor and shall also attest it as a true copy.

Thanking you,

Yours faithfully,

(Name) Sd/-

Candidate from Constituency.

In view of the aforesaid evidence of the three dis-interested independent and reliable officers it is proved that some of the polling agent of the B.J.P. who wanted to enter the polling booths were not possessing proper forms appointing them as polling agents and the forms in their favour were of the type of Ex. RW. 10/2. It is further clear from the telegram Ex. RW. 4/A that the party workers brought this matter to the notice of the authorities and the authorities issued instructions for allowing the entry of the polling agents.

Under section 46 of the Act read with rule 13 of the Conduct of Elections Rules, 1961 every candidate can appoint one polling agent and two relief agents for each of the polling station in the constituency and this appointment is to be in Form-10. The polling agent is to deliver the form to the presiding officer. It is a known fact that for the party candidates, different persons of that party render their services during the election period. In this particular case it is proved that in stead of Form-10 another simple application form for the supply of the copy of account of ballot paper at the close of the poll was sent to the polling agents of the respondent. This appears to have happened through inadvertence of the party workers. When these application forms were presented to the presiding officers by the polling agents, the presiding officers did not allow these polling agents to enter the polling booths for want of proper forms i.e. Form-10. As some local polling agents of the respondent at Ghumarwin were not allowed entry, the matter was reported to the local office of the respondent situated at Ghumarwin. Paras Ram Rai CRW. 30) states that a telephonic call was also made by him to Ghumarwin. It was an election day and naturally all the party workers of the B.J.P. after having received this information felt panicky and there was great commotion. Respondent was present in the office on that day along with Jagdish Ram, Jit Ram, Sham Bihari and Ram Dass Thakur. It is in evidence that proper polling agent forms were not available in the officer. Shri Jit Ram (RW.28) had fought election earlier and he went to search some forms from his old records and could find some forms. Photostat copies of these forms were prepared because these forms were in mutilated condition. Jit Ram (PW. 28) also contacted the B.J.P.- office at Bilaspur and requested them to contact the Deputy Commissioner's office and arrange for the sending the forms. Some new forms were also procured by him and cyclostyl-ed copies of these forms were prepared. All this process took about one hour. In the meantime new forms were also received from Bilaspur. When the proper forms become available, the next problem was to deliver the forms at the various polling stations immediately and every body was feeling panicky and perturbed. In order to ensure quick delivery of the forms two trucks were hired by the respondent so that the forms could be sent through these trucks and also by other conveyances available with the respondent. Truck HPN 347 was placed at the disposal of Shri Ram Dass (RW.29) for delivery of forms. Similarly Shri Jagdish Ram (RW. 41) was deputed to deliver forms on a scooter and the respondent himself undertook the delivery of forms in his Jeep which had been taken away by his wife.

Photostat copy of the form relating to polling station Ambot is RW. 15/1 and it was delivered by the respondent. Shri Devi Ram (RW.15) who was the Presiding Officer at this polling station states that at about 11 A.M. the form was delivered to him by Ramesh Chand polling agent who had come along with the respondent. He further states that Ramesh Chand had earlier come with an invalid letter but he was not allowed entry as the form presented by him earlier was not valid.

An old form RW. 14/2 was delivered at polling station Hatwar-1. This form was delivered by Ram Dass (RW. 29). Shri S. S. Chandel (RW. 14) was the Presiding Officer at this polling station. Shri Chandel states that Shri Gian Chand polling agent of the respondent come late with his appointment form Ex. RW. 14/2.

In Hatwar-2. polling station, Shri Hira Lal (RW.13) was the presiding officer. He states that the polling agent of the respondent was not allowed to sign the form at the time of commencement of the poll because he was not in possession of a valid appointment form. He further states that a valid appointment form was produced later and the polling agent was thereafter allowed to act as a polling agent of the respondent. These forms were delivered by Ram Das (RW.20).

Ex. RW 12/1 and Ex. RW 12/2 are the Forms for Bum polling station. Shri K. D. Sharma (RW. 12) was the Presiding Officer at this polling station. He states that Shri Sunder Ram was the polling agent of the respondent and he had produced a Form Ex. RW. 12/1. He further states that the aforesaid Sunder Ram subsequently after about an hour or 1-1/2 hour produced another Form Ex. RW. 12/2. He had considered the earlier Form Ex. RW. 12/1 as a valid form and had allowed the polling agent to enter the booth. The subsequent Form Ex. RW. 12/2 was brought by Ram Dass (RW. 29).

Form Ex. 48/1 is with respect to the polling station Pan-Itehra. Roop Lal (RW. 34) was the polling agent at this polling station. He states that he reached the polling station at 7.15 A.M. on 19-5-1982 and produced his appointment form. He was told by the Presiding Officer that the form was not proper and that for this reason he was asked to go out of the polling station. He came out of the polling station but at 12 NOON a fresh appointment form was received by him. On delivery of this form he was allowed to be present at the polling station. He further states that Dhian Singh (RW. 48) was another polling agent with him. Dhian Singh (RW. 48) also states that on seeing his appointment form he was told by the Presiding Officer that the form was not proper. That improper Form is Ex. RW. 48/1. He further states that subsequently at about 12 or 12.30 P. M. Sarvshri Ram Das and Jai Ram gave him fresh appointment forms. With these fresh appointment form he could go inside the polling station.

Ex. RW. 21/2 and RW. 30/1 are the two old forms for polling station Marahana-1. Paras Ram (RW. 30) was the polling agent. He states that on production of the form he was told by Presiding Officer that the Form was not proper and for this reason he was not allowed to stay inside the polling station. He further states that he rang up party election office at Ghumarwin and informed them about this fact. The office informed him that all the forms were improper and they were taking steps to replace these forms by proper forms. After about 2 or 2 1/2 hours, he got the proper forms which were brought by Jagdish Ram on a motor cycle and he delivered the proper forms at the polling stations. Prithvi Chand (RW. 37) also states that he was polling agent for Marahana. He states that on seeing his appointment form the Presiding Officer told him that the form was not proper. He was asked to leave the polling station. He further states that at about 11 or 11.30 A.M. Paras Ram (RW. 30) brought new forms which were delivered and were accepted by the Presiding Officer. That Form is Ex. RW. 21/1.

Ex. RW. 16/2 is a mutilated form for Gandalvi polling station. This form was given by Paras Ram Rai (RW. 30) at about 12 NOON. Shri Bahadur Ram (RW. 16) was the Presiding Officer at Gandalvi. He states that Lekh Raj (RW. 35) polling agent of the respondent, produced an appointment form which was not proper but the same was accepted by him. He further states that later on another appointment form Ex. RW. 16/2 was handed over by Lekh Raj which was kept by him on record. Lekh Raj (RW. 35) also corroborates this version and states that at about 12 noon, Paras Ram (RW. 30) brought the new and proper appointment form which was produced by him before the Presiding Officer.

RW. 17/2 is the appointment form for Gandalvi-2. Shri Sukh Dev Datt (RW. 17) was the Presiding Officer at this station. He states that Beli Ram (RW. 36) was the polling agent of the respondent. Beli Ram produced an appointment form which was not proper. He also states that as the appointment form was not proper, therefore Beli Ram was turned out of the polling station. He further states that after about 1-1/2 hour, Beli Ram again came with a proper form (Ex. RW. 17/2) and upon presentation of this form, he was allowed to stay in the polling station as a polling agent. Beli Ram (RW. 37) also states that earlier form was not found to be proper and that he came out of the polling station because he was asked to go out of the polling station. He further states that he made a report of this fact to Subedar Mathra Das who at about 11.45 A.M. brought another appointment form Ex. RW. 17/2 and upon the presentation of this fresh form he was allowed to remain in the polling station as a polling agent.

Forms with respect to polling stations No. 11 to 17 have not been exhibited and these were not referred to during the arguments.

Ex. RW. 11/1 is an old form for Parnal-1 polling station. Shri L.R. Sharma (RW.11) was the Presiding Officer at this polling station. He states that Piare Lal Sharma (polling agent) was present at the polling station during the morning hours but he was not in possession of the proper letter of appointment and for this reason he was not allowed to remain at the polling station. Thereafter he brought a proper appointment form Ex. RW. 11/1 within about one hour. After the presentation of this form he was allowed to act as a polling agent. In the later part of his examination he states that the appointment form Ex. RW. 11/1 was produced before the commencement of the poll. Ram Das (RW.29) states that this form was delivered by him. In view of the statement of Ram Dass (RW. 29) the earlier part of the statement of Shri L.R. Sharma (RW.11) appears to be correct and it appears that the proper appointment form Ex. RW. 11/1 was delivered after some time.

Ex. RW. 10/2 and Ex. RW. 10/1 are the forms for Parnal-2 polling station. Shri Ajay Kumar (RW. 10) was the Presiding Officer for this polling station. He states that Ex. RW. 10/1, RW. 10/2 and RW. 10/3 were produced by Jagdish Kumar, polling agent. He states that forms Ex. RW. 10/2 and RW. 10/3 were produced after the commencement of the poll. According to Ram Dass (RW.29) the form Ex. RW. 10/2 was handed over by him.

Ex. RW. 18/2, RW. 18/3 and RW. 18/4 are the forms for polling station Ladha. Ram Das (RW. 29) states that form Ex. RW. 18/3 was brought by him. Lalman Sharma (RW. 18) was the presiding officer at this polling station. He states that Sukh Dev and Brahm Das (RW. 32) were polling agents of the respondent. He further states that the forms Ex. RW. 18/1 to Ex. RW. 18/3 were produced by Sukh Dev and Ex. RW. 18/4 was produced by Brahm Dass. Brahm Dass (RW. 32) states that he was the polling agent of the respondent. He produced the form Ex. RW. 18/4. He further states that the presiding officer told him that the form was not proper. He was not in possession of any other form therefore the Presiding Officer allowed him to stay in the polling station. Later on at about 9.45 A.M. a voter gave him another appointment form Ex. RW. 18/3 which was handed over by him to the presiding officer.

Ex. RW. 31/1 and Ex. RW. 31/2 are the forms for Kuthera polling station. According to Ram Dass (RW. 29) the form Ex. RW. 31/2 was brought by him. Kanshi Ram (RW. 31) was the polling agent at this polling station. He states that he produced the appointment form Ex. RW. 31/1 but the Presiding Officer told him that that form was not proper. The presiding officer, however, allowed him to stay inside the polling station to work as a polling agent. He further states that at about 8.45 A.M. or 9 A.M. he got a message to the effect that he was wanted outside. On going out he found Ram Das (RW. 29) and Jai Ram sitting in a truck. They gave him another form Ex. RW. 31/2 which he produced before the Presiding Officer.

Ex. RW. 22/2 and Ex. RW. 22/3 are the forms for Thandora polling station. Shri S.D. Sharma (RW. 22) was the presiding officer at this polling station. He states that the form Ex. RW. 22/2 was produced by Shri Gian Chand polling agent. Shri Parkash Chand (another polling agent) of the respondent came late and produced appointment letter Ex. RW. 22/3. Parkash Chand (RW. 44) states that he was the polling agent and that he produced the appointment form Ex. RW. 22/3. The Presiding Officer told him that the appointment forms were not proper but at the same time he allowed Gian Chand, polling agent of the respondent to stay inside the polling station and asked him to leave the polling station. He left the polling station and went to the party camp. He deputed a worker from the party camp to Ghumarwin to bring proper form and a proper form was brought to him at 11.30 A.M.

Ex. RW. 19/1 is a form with respect to polling station Seu. Shri Chaman Lal (RW. 19) was the presiding officer at this polling station. According to him one Ramji Dass polling agent of the petitioner was present at the commencement of the poll. He further states that another person came

and claim to be a polling agent of the respondent but as this man was not in possession of a valid appointment form, therefore he was not recognized as a polling agent of the respondent. The said polling agent left the polling station but returned within one hour with a form Ex. RW. 19/1. Tulsi Ram (RW. 39) states that he reached this polling station at about 7.15 A. M. and produced the appointment form before the Presiding Officer. He was told by the Presiding Officer that the form was not proper and as such he left the polling station. A fresh form Ex. RW. 19/1 was thereafter delivered to him at about 9.15/9.30 A.M. and the same was presented to the presiding Officer which was accepted. This form was brought by Jagdish Ram, Advocate.

Ex. RW. 20/2 and Ex. RW. 20/3 are the forms with respect to Bhadrog polling station. Satinder Kumar (RW. 20) was the Presiding Officer at this polling station. He states that Sarvshri Hoshiar Singh, Inder Singh and Narain Singh Swami were present at the time of sealing of the Ballot boxes. He states that the appointment forms Ex. RW. 20/2 and RW. 20/3 were produced by Inder Singh and Hoshiar Singh. Hoshiar Singh (RW. 50) also states that he produced an appointment form before the presiding officer which was initially accepted by the Presiding Officer. Thereafter the presiding officer realised that the appointment form was not proper and asked him to go out. He came out of the polling station. Afterwards Shri Jagdish Ram, Advocate, delivered him another form at about 9.30 A.M. which was presented by him to the Presiding Officer. This form, according to him, is Ex. RW. 20/3 and it was accepted by the Presiding Officer.

Ex. RW. 23/2 is the form for Kathalag polling station. Shri Munshi Ram (RW. 23) was the Presiding Officer at this polling station. He states that Shri Jagan Nath was the polling agent of the respondent. Jagan Nath reached the polling station at about 8 A. M. and was not having a proper appointment form. He further states that Jagan Nath was not allowed to remain inside the polling station. Jagan Nath left the place but returned at about 11 A. M. with proper appointment form Ex. RW. 23/2. Jagan Nath (RW. 51) also corroborates this statement. According to Jagan Nath the new form was delivered to him by Ram Parkash.

Ex. RW. 40/2 is the form for Dhadol polling station. Bhagat Ram (RW. 40) was the polling agent at this polling station. He states that he reached the polling station at 7.20 A.M. and produced a form of his appointment. This form was not accepted by the Presiding Officer and he was asked to leave the polling station as the form was invalid. Upon this, he left the polling station and at about 9.15 A.M. another appointment form Ex. RW. 40/2 was handed over to him by Shanker Lal (another polling agent) of the respondent. This form was accepted by the Presiding Officer. According to the respondent this form was brought by Shri Jagdish Ram.

Ex. RW. 27/2 is the appointment form for Dengar polling station. Shri Atma Ram (RW. 27) was the Presiding Officer at this polling station. According to him Parkash Chand and Munshi were the two polling agents of the respondent and they signed the form Ex. RW. 27/1. He states that Ex. RW. 27/2 is the appointment form which was produced before him by Munshi Ram. Parkash Chand (R.W. 38) and Munshi Ram (R.W. 43) state that the form was delivered at about 10 or 10.15 A.M. when Sham Behari came to the polling station in a truck.

Ex. R.W. 25/2 is the form for Chat polling station. Shri Birbal Sharma (R.W. 25) was the Presiding Officer at this polling station. He states that one person claiming to be the polling agent of the respondent came to the polling station before the commencement of the poll but he was not allowed to enter the polling station as he was not in possession of a valid appointment form. Subsequently Gian Singh came to the polling station with an appointment form Ex. R.W. 25/2. Upon the production of this form he was allowed entry in the polling station. The respondent also corroborates this version and states that the form was brought by Sham Behari.

Ex. R.W. 33/2 and Ex. R.W. 33/3 are the photostat copies of the form for Bari Maanharwan. These forms are proved by Shri Karam Dev Dharmani (R.W. 33). He states that he

was appointed as polling agent by the respondent. He produced the appointment form Ex. R.W. 33/2 to the Presiding Officer. He further states that Ex. R.W. 33/3 is the appointment form of the polling agent Shri Krishan Singh.

Ex. R.W. 7/1 is the appointment form for polling station Ghumarwin. Shri S.N. Shorey (RW.7) was the Presiding Officer at this polling station. He states that one person claimed to be a polling agent of the respondent but he was not having proper form and was not recognized as a polling agent of the respondent. Thereafter he brought the form Ex. RW. 7/1. His name was Rajinder Singh, Sarvshri Jit Ram (RW.28) and Ram Das (R.W.29) also corroborate this statement.

Ex. RW. 8/2 and Ex. RW. 8/1 are the forms for Ghumarwin. Shri S.S. Chandel (RW.8) was the presiding officer for this polling station. He states that the form Ex. RW. 8/1 was produced by Padam Kumar. Shiv Kumar produced another form Ex. R.W. 8/2. Padam Kumar (RW.46) states that he reached the polling station at 7.25 A.M. He was asked to go out the polling station as his appointment form was not proper. He thereafter went to the party office at Ghumarwin and told Jagdish Ram about this fact. Jagdish Ram asked him to go back to the polling station and at about 8.45 A.M. he received the proper appointment form. Sarvshri Jit Ram and Ram Dass also corroborate this statement.

Ex. RW. 9/1 is the appointment form for Loharwin. Shri I.D. Sharma (RW.9) was the Presiding Officer at this polling station. He states that one person claiming himself to be the polling agent of the respondent came to the polling station but was not possessing a valid appointment form and for this reason was not recognized as a polling agent. After about two hours, that man came again with a proper appointment form Ex. RW. 9/1 which was accepted. His name was Nand Lal. Nand Lal (RW.49) also corroborated this statement.

Ex. RW. 6/1 and Ex. RW. 42/1 are the forms for Ghumarwin polling station. Shri Sher Singh was the Presiding Officer at this polling station. He states that one Gulabu Ram produced an appointment form but it was not on the prescribed form and as such he was not allowed to act as a polling agent. After about 15/20 minutes he brought another appointment form Ex. RW. 6/1. Ram Lal (RW.42) was the polling agent of the respondent. He states that he was told by Gulabu Ram that appointment forms were not proper upon which he went to the party office and apprised Shri Jagdish Ram of the situation. Shri Jagdish Ram told him that necessary arrangements were being done. Later on he received the proper appointment form Ex. R.W. 42/1.

Regarding other polling stations there is no documentary proof of the various forms.

From the aforesaid evidence it is proved that at the initial stages many polling agents of the respondent were not in possession of the proper or valid form (Appointing them as polling agents of the respondent). Many polling agents were not allowed entry in the polling stations by the Presiding Officers concerned. This situation created panic in the party workers and in the party's offices located at Ghumarwin and Bilaspur with the result that within an hour of two, proper appointment forms were received by various polling agents at various polling stations. The matter was also brought to the notice of the higher authorities controlling the election and a wireless message was issued to allow the entry of the polling agents if they were in possession of any type of forms. The statements of Jagdish Ram, Sham Behari and Ram Dass and the respondent also prove that they went in different directions to deliver the appointment forms to various polling agents at various polling stations. Shri Jagdish used a scooter while Sham Behari used truck No. 4875 and Ram Dass Truck No. HPN 347 for delivering the forms.

Similarly the respondent used the Jeep.

The cumulative effect of the evidence is that proper appointment forms were not available with the polling agents of the respondent and it created panic in the minds of the party workers who had all along been canvassing for the success of the respondent. The situation was critical because it was the election day and there was no time to think over the matter. In these circumstances the explanation of the respondent appears to be truthful. The respondent and other persons of the party would like to take the least chance even by over doing things. They were keen to deliver proper forms and in their anxiety for early delivery as a precautionary measure and to be more prompt, two trucks No. 4875 and 347 were hired and procured by the respondent or his party workers for the purpose of delivery of these appointment forms. It is just possible that the new forms might have been delivered at some places even before the receipt of the forms sent through these trucks or that there was duplication in the receipt of the forms. Such like eventualities do happen when a stir and panic is created and every body tries to be more sure and to give and render the best service within the least period. The map of the constituency Ex. R.W. 24/1 shows that there are different roads for different polling stations, and, therefore, it was not improper for the respondent or his party workers to have hired two trucks even if they were in possession of other conveyances. Similarly it was natural for them to have obtained the services of several persons for delivering such forms. It is not unnatural that in such a situation more than one form is sent to the same polling agent of the same polling station through different persons to be more sure of the delivery of a proper form at the earliest. Thus it is proved that the trucks were in fact hired or procured for the delivery of the forms to the various polling agents at various polling stations.

The version of the petitioner's witnesses to the extent that some of them or most of them were taken in these trucks to the polling stations free of any conveyance charges may be correct, but this will not prove the fact that the vehicles were hired or procured for the free conveyance of the voters. If a vehicle is on its way to deliver the forms to the polling agents at a particular polling station and in the way some voters are going to the polling stations and per chance they are familiar with the truck driver or any other occupant of the truck, then in that situation the aforesaid voters may be carried in the truck without any conveyance charges. It does not in any way mean that the voters were carried free of conveyance charges for the purpose of casting of their votes or that they were influenced for casting their votes in favour of the respondent.

In view of the aforesaid circumstances I decide issue No. 6 against the petitioner.

ISSUE NO. 7

As a result of my findings on various issues relating to charges of corrupt practices, I hold that the respondent has not committed any corrupt practice at the election and in view of my findings on various issues, I dismiss this election petition with costs assessed at Rs. 800/- to be paid by the petitioner to the respondent. I direct that the substance of this decision be communicated to the Election Commission and the Speaker of the Himachal Pradesh State Legislative Assembly forthwith. An authenticated copy of the decision be also sent to the Election Commission at the earliest.

March 5, 1984

SEAL

Attested to be true copy.

Sd/-

Superintendent (Judicial)

High Court of Himachal Pradesh
Shimla.

Sd/-
V. P. GUPTA, J.

By order,
DHARAMVIR,
Under Secretary,
Election Commission of India.

ELECTION DEPARTMENT

NOTIFICATION

Shimla-171002, the 27th June, 1984

No. 3-9/84-ELN.—The Election Commission of India's Notification No. 82/HP-LA (10/82)/84, dated the 14th June, 1984 corresponding to 24 Jyaistha, 1906 (Saka) containing the Judgement dated the 3rd May, 1984 of the High Court of Himachal Pradesh at Shimla in Election Petition No. 10 of 1982, is hereby published for general information.

By order,
ATTAR SINGH,
Chief Electoral Officer,
Himachal Pradesh.

ELECTION COMMISSION OF INDIA

*Nirvachan Sadan,
Ashoka Road,
New Delhi-1.
14th June, 1984*

Dated: _____
24 Jyaistha, 1906 (Saka).

NOTIFICATION

No. 82/HP-LA (10/82)/84.—In pursuance of Section 106 of the Representation of the People Act, 1951, the Election Commission hereby publishes the judgment dated the 3-5-1984 of the High Court of Himachal Pradesh at Shimla in Election Petition No. 10 of 1982.

भारत निर्वाचन आयोग

अशोक म गं,
नई दिल्ली-110001

14 जून, 1984

तारीख—_____
24 ज्येष्ठ, 1906 (शक्)

अधिसूचना

सं० 82/हि० प्र०-वि० सं० (10/82)/84. —लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग 1982 की निर्वाचन अर्जों सं० 10 में शिमला स्थित हिमाचल प्रदेश उच्च न्यायालय के तारीख 3-5-1984 का निर्णय एतद्वारा प्रकाशित करता है।

Copy of the judgement delivered by Hon'ble Mr. Justice H.S. Thakur, J. on 3-5-1984 in Election Petition No. 10 of 1982, titled:
Smt. Leela Devi

..Petitioner.

vs.

Rangila Ram Rao

..Respondent.

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Election Petition No. 10 of 1982

May 3, 1984.

Smt. Leela Devi

Rangila Ram Rao

H. S. Thakur, J.

Shri M.L. Sharma, Advocate.

S/Shri Inder Singhand M.C. Mandhotra, Advocates.

H. S. THAKUR, J.

(Oral)

The petitioner has filed this election petition praying that the election of the respondent to the Himachal Pradesh Legislative Assembly from 64—Gopalpur constituency be declared as void.

A few facts relevant for the decision of this election petition may be stated. It is pointed out in the election petition that a notification dated April 16, 1982 was issued by the Governor of Himachal Pradesh calling upon all Assembly Constituencies of Himachal Pradesh to elect members to represent them in the Himachal Pradesh Legislative Assembly and the Election Commissioner issued a programme of election for that purpose on the same day. The election programme was notified and after the date of withdrawal of names, the petitioner, respondent and some others were left in the field. The petitioner as also the respondent had filed their nomination papers on April 20, 1982. The polling took place on May 19, 1982 and the votes were counted on May 21, 1982. Since the respondent secured more votes, he was declared elected by the Returning Officer on that day.

It is stated in the election petition that the respondent was a member of Himachal Pradesh Vidhan Sabha from June, 1977 to April 19, 1982. With effect from May 9, 1980, he was appointed as Chief Parliamentary Secretary to the Government of Himachal Pradesh. It is pointed out that since there was no provision for the appointment of Chief Parliamentary Secretary under the Constitution of India, the Government of Himachal Pradesh in exercise of its executive powers, accorded sanction to the creation of the post of Chief Parliamentary Secretary. Consequently, the respondent was appointed as such by an order dated 11th June, 1980. The order was, however, made effective from May 9, 1980. It is stated that on April 19, 1982, the Governor of Himachal Pradesh in exercise of his powers under Article 174 of the Constitution of India, dissolved the Legislative Assembly of Himachal Pradesh with effect from that date. As such, according to the petitioner, the respondent ceased to be a member of Himachal Pradesh Legislative Assembly (The Assembly in short) and could not continue to be a Member of the Government of Himachal Pradesh, headed by the then Chief Minister. It is contended by the petitioner that from that day onward, the respondent was reduced to the status of an employee of the State Government drawing a salary of Rs. 1,000/- per month apart from enjoying other privileges as contained in Annexure-A. According to the petitioner, since the respondent held the office of profit under the State of Himachal Pradesh from April 19, 1982, the protection from disqualification afforded to him as a Chief Parliamentary Secretary under Section 3 of the Himachal Pradesh Members of Legislative Assembly (Removal of Disqualifications) Act, 1971 (hereinafter to be referred as the Act of 1971) ceased to be available to him from that day onwards. The respondent is stated to have resigned from the said office on 24th May, 1982.

The contention of the petitioner is that the respondent was holding an office of profit on 20th April, 1982 when he filed his nomination papers and also on 21st May, 1982 when he was declared elected as a Member of the Assembly. According to the petitioner, the respondent was disqualified to be chosen as a member of the Assembly, under Article 191(1) (a) of the Constitution of India.

In the written statement filed by the respondent, the allegations made by the petitioner have been controverted. It is, however, contended that the election of the respondent is in accordance with law and there is no infirmity attached thereto. It is not disputed that the respondent was a member of the Assembly from June 1977 to April 18, 1982. It is further not disputed that the respondent was appointed as Chief Parliamentary Secretary to the Government of Himachal Pradesh with effect from 9th May, 1980. It is, however, contended that the appointment of the respondent was not co-extensive with his membership of the Assembly. It is refuted that the respondent could remain as Chief Parliamentary Secretary only so long as he was a member of the Assembly. It is admitted by the respondent that the Assembly was dissolved by the Governor on 19th April, 1982. It is asserted by him that his appointment was never revoked and that he continued to be a member of the Government headed by the then Chief Minister under rules of procedure and Parliamentary practice and conventions. According to the respondent, the Governor of Himachal Pradesh after dissolving the Assembly requested the Government headed by the then Chief Minister to continue in office and discharge its function till the election in the state was held and new Government formed on the basis of such election. The then Chief Minister accepted the responsibility and continued in office and discharged the functions of the Government. It is stressed by the respondent that he was entitled to continue as Chief Parliamentary Secretary and work as such after the dissolution of the Assembly. According to the respondent, he had been performing numerous duties of ministerial nature and his appointment and allocation of business did not confine him to the duties in the Legislative Assembly alone. It is contended by him that the Governor of Himachal Pradesh was pleased to attach the respondent with the Chief Minister for the works relating to the Departments of Health & Welfare, Ayurveda, Law and Parliamentary Affairs. According to the respondent, he was a part and parcel of the Government which had been asked to continue and to remain in office after the dissolution of the Assembly and that under no circumstances he could be termed as an employee of the State Government. It is contended that he did not draw any salary as an employee or T.A. & D.A. and also did not use any government vehicle. An additional plea in the reply has also been specifically raised by the respondent. It is convenient to reproduce the same in *extenso* :

“ADDITIONAL PLEA

6-A. The respondent submits that even if it is held that he was holding an office of profit, then as intended under Article 191 (1) (a) of the Constitution, the office of the Chief Parliamentary Secretary has been declared by the H.P. Legislative by law not to disqualify its holder by enacting Section 3 (d) of the H.P. Legislative Members (Removal of Disqualifications) Act, 1971, as such the respondent is not disqualified under any law of the country and the petition is misconceived, liable to be dismissed.”

On the pleadings of the parties as many as eight issues were framed. The same may be reproduced for a ready reference :—

- “1. Whether the respondent was not entitled to hold the office of Chief Parliamentary Secretary to the Government of Himachal Pradesh from 19-4-1982 till 24th May, 1982, the date on which he resigned ? OPP.
2. If issue No. 1 is proved, whether the office which the respondent held from 19-4-82 to 24th May, 1982, was an office of profit under the State of Himachal Pradesh and the protection given under clause (d) of section 3 of the Himachal Pradesh Legislative Assembly Members (Removal of Disqualifications) Act, 1971, was not available to him ? OPP.
3. Whether the Election Petition is liable to be dismissed on the ground that it does not comply with the provisions as contained in section 81 of the Representation of People Act ? OPR.

4. Whether in view of the provisions contained in clause (d) section 3 of the Himachal Pradesh Legislative Assembly Members (Removal of Disqualifications) Act, 1971, the election petition is not maintainable? OPR.
5. Whether Annexure 'PA' is not properly verified? If so, what is its effect? OPR.
6. Whether in view of the fact that the petitioner in para 2 of the petition stated that "the petitioner, the respondent and a few others were validly nominated candidates left in the filed" she is estopped to file the Election Petition? OPR.
7. Whether the failure on the part of the petitioner to give a concise statement of particulars of office which was held by the respondent after 19-4-82 till 24th May, 1982 deserves the dismissal of the Election Petition? OPR.
8. Relief."

Issues No. 1, 2 and 4 are inter-connected and can conveniently be disposed of together. In fact, the decision of the election petition depends on the decision of these issues. The learned counsel for the petitioner has contended that under Article 164 of the Constitution of India, a Chief Parliamentary Secretary is not included in the category of the Council of Minister. On this account it is argued that the respondent could not continue as a Chief Parliamentary Secretary after he ceased to be a member of the Assembly. According to the learned counsel for the petitioner, under Article 164 (4) only a Minister can continue as such for any period of six consecutive months without being a member of the Legislature of the State. The contention of the learned counsel is that since the respondent with effect from 19th April, 1982 till 24th May, 1982 held the office of profit as Chief Parliamentary Secretary he was not eligible to contest the election.

On the contrary, it is contended by the learned counsel for the respondent that the contention is baseless. He has referred to section 3 (d) of Removal of Disqualification Act. It is desirable to refer to the relevant provisions of the said Act, The relevant section is Section 3 (d) and is reproduced as under for a ready reference:—

- “3. A person shall not be disqualified for being chosen as, and for being, a member of the Himachal Pradesh Legislative Assembly by reason only of the fact that he holds any of the following offices of profit under the Government of India or the Government of any State:—

- (a) the office of a Deputy Minister or Minister of State;
- (b) any office held by a Minister, Minister of State, or Deputy Minister whether *ex-officio* or by name;
- (c) the office of the Speaker or the Deputy Speaker of the Himachal Pradesh Legislative Assembly of any other State;
- (d) the office of the Chief Parliamentary Secretary or Parliamentary Secretary;
- (e)

Under Article 191 of the Constitution of India, a person is disqualified for being chosen as, and for being, a member of the Legislative Assembly if he holds any office of profit under the Government of India or the Government of any state specified in the first schedule, other than an office declared by the Legislature of the state by law not to disqualify its holder. As pointed out earlier above, the Assembly enacted “the Act of 1971” providing that a person shall not be disqualified for being chosen and for being a member of the Himachal Pradesh Legislative Assembly by reason only of the fact that he holds any of the office of profit under the Government of India or the Government of any State as detailed under the said section. The holder of the office of the Chief Parliamentary Secretary is not disqualified for being chosen as a member of the Assembly under “the Act of 1971”. That being the legal position, it cannot be

said that the respondent was not qualified to be elected as a member of "the Assembly". As such, the respondent was entitled to hold the office of Chief Parliamentary Secretary to the Government of Himachal Pradesh even from April 19, 1982 to May 24, 1982. Issue No. 1 is accordingly decided against the petitioner. Consequently, issues No. 2 and 4 are also decided in favour of the respondent.

ISSUE NO. 3

It is not shown by the learned counsel for the respondent as to how the election petition does not comply with the provisions as contained in section 81 of the Representation of People Act. As such, this issue is decided against the respondent.

ISSUE NO. 5

This issue has not been pressed by the learned counsel for the respondent. Otherwise also, it is not shown as to how the verification has not been properly done. As such, this issue as well is decided against the respondent.

ISSUE NO. 6

This issue has also not been pressed by the learned counsel for the respondent and is decided against him.

ISSUE NO. 7

It is not shown as to how the petitioner has failed to give a concise statement of particulars of office which was held by the respondent after 19th April, 1982 till 24th May, 1982. In fact it is an admitted case of the respondent as well that he continued to hold the office of Chief Parliamentary Secretary from 19th April, 1982 till 24th May, 1982. As such this issue is decided against the respondent.

The upshot of the above discussion is that there is no merit in this election petition and the same is dismissed with costs.

The Registry is directed to comply with the legal requirements as provided under Section 103 of the Representation of the People Act, 1951.

Sd/-
(H. S. Thakur) J.

May 3, 1984.

SEAL

Attested
Sd/-
Superintendent (Judicial),
High Court of Himachal Pradesh,
Shimla.

By order,
DHARAMVIR,
Under Secretary.

